THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.12069, 12087, 12099 and 12112 of 2005

25.7.2007

Between:

Meera Bai, W/o.Gangadhar

… Petitioner

AND

The District Collector, Nizamabad District
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.12069, 12087, 12099 and 12112 of 2005

COMMON ORDER:

These writ petitions are filed challenging the orders dated 02.6.2005 passed by the Revenue Divisional Officer (RDO), Bodhan, Nizamabad District, whereby and whereunder the assignment of land made in favour of the petitioners was cancelled. This Court while admitting the writ petitions granted interim orders staying operation of the impugned proceedings. The respondents moved applications for vacating the stay. When the interlocutory applications are listed, with the consent of the learned Counsel appearing for rival parties, the matters were heard and are being disposed of by this common order.

The brief fact of the matter is as follows. The Mandal Revenue Officer (MRO), Madnoor Mandal, assigned an extent of Acs.3.00 in survey No.183/83 of Awalgaon village of Madnoor Mandal in Nizamabad District in favour of Meera Bai. An extent of Acs.4.00 in survey No.183/84 of Awalgaon village was assigned to Pushpa Bai. The MRO also assigned an extent of Acs.3.00 in survey No.84/13 of Shekapur village in favour of Ravi Kumar, and another extent of Acs.3.00 in survey No.84/G/3 of Shekapur village was assigned in favour of Rekha Bai. The MRO assigned these lands vide separate proceedings dated 08.6.1996. All the assignees, who are residents of Eklora Kurd village, claim that they are landless poor persons and personally cultivating the land.

Some of the villagers of Awalgaon village filed complaints alleging that the assignees are not landless poor persons, that all of them belong to one family and that they obtained assignment by misrepresentation and withholding the facts. Therefore, an enquiry was conducted by the RDO. Show cause notices for cancellation of assignment were issued on 15.2.2005 calling upon the assignees to show cause as to why the assignment shall not be cancelled and the

same land shall not be assigned to landless poor persons. All of them submitted explanations stating that the assignment in their favour was valid and cannot be cancelled. They also denied the allegation that they are not residents of Awalgaon village. The RDO by separate proceedings dated 02.6.2005 cancelled the assignment *inter alia* on the ground that the assignees are ineligible for assignment and the MRO was directed to resume the land under the cover the panchanama. Aggireved by these orders, Meera Bai filed WP No.12069 of 2005, Ravi Kumar filed WP No.12087 of 2005, Rakha Bai filed WP No.12099 of 2005 and Pushpa Bai filed WP No.12112 of 2005 respectively. The orders canceling the assignment in their favour are challenged on the ground that the said orders are arbitrary, illegal and violative of principles of natural justice.

Along with the applications for vacating the stay, the MRO filed counter affidavits. It is stated that the petitioners hail from high-class society, that they or their family members already owned lands and that the then MRO granted assignment on misrepresentation of facts. It is also alleged that Pushpa Bai, Rekha Bai and Meera Bai are sisters and Ravi Kumar is son of Pushpa Bai. All the petitioners being members of same family, they are not eligible for the assignment. It is also alleged that Pushpa Bai and her husband, Rohi Das, are owners of land whereas Rekha Bai's husband and Meera Bai's husband are well to do persons with the land of their own. In the counter affidavit, the following particulars are furnished.

Sl. No.	W.P. Number	Name of the petitioner	Existing prior to assignment Sy.No. & Extent	Assignment Sy.No. & Extent
1.	12069/2005	Smt.Meera Bai	--	183/3 Acs.3.00 at Awalgaon
2.	12087/2005	Sri.Ravi Kumar	--	84/13 Acs.3.00 at Shekapur
3.	12099/2005	Smt.Rekha Bai	91 Acs.4.37 in the name of the husband	84/13 Acs.3.00 at Shekapur
4.	12112/2005	Smt.Pushpa Bai	90/E Ac.1.00, 43/B Acs.2.00	183/84 Acs.4.00 at Awalgaon

An allegation is also made in the counter affidavit that the petitioners are not residents of the village where the land is situated.

Learned Counsel appearing for the petitioners in all the writ petitions submits that even if the petitioners or their family members are owners of land, under Rule XIV(2) of Assignment Rules, the land in possession of the petitioners in excess of Acs.5.00 can only be resumed. Secondly, he submits that the finding recorded by the RDO that the petitioners are not eligible for assignment, is not supported by any record and that no such enquiry was conducted after giving notice to the petitioners. According to the learned Counsel, the RDO erroneously took into consideration the land owned by sister/sisters of the respective petitioners and other family members and when once the sisters have their own families, the land owned by one sister cannot be treated as disqualifying factor for assignment to another sister.

Learned Assistant Government Pleader for Revenue (Assignment) submits that initial assignment made in favour of the petitioners was itself illegal and therefore when once the entire assignment is cancelled, Rule XIV has no application. He submits that burden lies on the petitioners to show that they are eligible for assignment and in the absence of any material produced by the petitioners, RDO was correct in coming to the conclusion that the petitioners are ineligible for such assignment. He also points out that RDO conducted enquiry and found that the petitioners are not residents of the village where the land is situated.

Under Section 22 of Andhra Pradesh (Telangana Area) Land Revenue Act 1317 Fasli (Land Revenue Act, for brevity), it shall be lawful for the District Collector or any other officer appointed by the Government to dispose of the lands at his discretion duly keeping in view the provisions under Sections 25 to 27 of the Land Revenue Act. In exercise of their powers under Section 172 of the Land Revenue Act, the Government made Assignment Rules in G.O.Ms.No.1406, dated 25.7.1958 (the Assignment Rules). There are 15 Rules. Rules III, IV, VIII and XIV are relevant for the purpose of this case. They read as under.

> **III. Persons eligible for occupation or assignment of Government lands:**- Lands at the disposal of the Government should be assigned only to landless poor persons who directly engage themselves in cultivation, including Harijans, ex-toddy tappers. Backward communities and weavers.
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> **IV. Definition of landless poor person:-** A landless poor person is one who owns not more than one acre of wet or 5 acres of dry land and is also poor. The question whether a person is poor or not is left to the discretion of the assigning authorities. One acre of wet will be treated as 5 acres of dry

land shall be treated as wetland. The share of each member of a joint family, as also the enjoyment of the income of the joint family by an application will be taken into consideration for deciding whether or not he is a landless poor person.

VIII. Preference amongst eligible applicants:- Preferential claim shall be recognized in the case of the following categories of persons:

(i) Sivoijamadars who have expended a material amount of labour or money in re-claiming or improving the land;

(ii) Persons who hold trees on the land and under the tree tax system;

(iii) Persons who have been using the water of wells in the land for cultivation; and

(iv) Preference shall be given to the people of the village where the lands are situated.

XIV. Eviction of occupiers not eligible for assignment:- All occupiers of land at the disposal of Government shall be evicted in the following cases:-

(a) if the occupier is not landless poor person he shall be evicted from the entire occupation; and

(b) in case an occupier is a landless poor person, he shall be evicted from such excess, if any extent, over and above the area under his occupation which together with the lands owned byhim would make up a total extent of one acre of wet or 5 acres of dry land.

The conspectus of the above extracted Rules may be noticed. All the lands at the disposal of the Government shall be assigned only to landless poor persons. A person who owns not more than Ac.1.00 of wetland or Acs.5.00 of dry land and also poor is eligible. While making assignment under Rule VIII(4) of the Assignment Rules, preference has to be given to the people of the village where the land at the disposal of the Government shall be evicted. However, in case an occupier is landless poor person he shall be evicted from such excess, if any extent, over and above the area under his occupation which together with the lands owned by him would make up a total extent of Ac.1.00 of wetland or Acs.5.00 of dry land. In the case on hand, even according to the petitioners, all of them are residents of Eklora Kurd village whereas the land assigned to them is situated in Awalgoan and Shekapur villages. Therefore, the assignment itself was improper. Secondly, in the counter affidavit, a categorical averment is made that Pushpa Bai owns an extent of Acs.3.00 in survey Nos.43/B and 93/E, and that Rekha Bai owns Acs.4.37 in survey No.91 in the name of her husband. This has not been denied. Therefore, on this ground also, the petitioners are not eligible for assignment. Thirdly, as alleged by the respondents, Meera Bai,

Rekha Bai and Pushpa Bai are sisters, and Ravi Kumar is son of Pushpa Bai. Therefore, a reasonable inference can be drawn that all the members of the same family got assignment in their favour though they were already owners of agricultural land. The objective behind the assignment policy is thus defeated.

As noticed above, Rule XIV of the Assignment Rules deals with eviction of occupiers of Government land, who are not eligible for assignment. In this case, the petitioners came into possession after obtaining assignment and they do not fall under the category of occupiers of Government land. Therefore, as rightly submitted by the learned Assistant Government Pleader Rule XIV has no application.

The submission that enquiry was conducted by the RDO behind the back of the petitioners, which was the basis for cancellation of their assignment and therefore the impugned orders are illegal, cannot be accepted. After receiving the complaints, RDO conducted enquiry in the villages where the lands are situated and in the enquiry it is found that all the petitioners are members of the same family, that they are not staying in the village where the lands are situated – which is also not denied. Therefore, even if the petitioners were not given notice at the time of conducting enquiry, no prejudice is caused to them. It is not their case that Pushpa Bai and Meera Bai are residents of Awalgaon and Rekha Bai and Ravi Kumar are residents of Shekapur. Therefore, in the absence of any prejudice, the enquiry conducted by the RDO before issuing show cause notices cannot be faulted. As rightly observed by the RDO, though the petitioners submitted explanations, they did not produce any document to show that they are residing in the respective villages where the lands were assigned to them. Burden of proof certainly lies on them to show that they are landless and poor persons. The petitioners obtained assignment by misrepresentation and therefore there cannot be any illegality if such assignment is cancelled.

The writ petitions are devoid of merits and are accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

July 25, 2007.
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